

CFC to the second-mentioned CFC if that dividend would have been exempt under section 10B(2)(a) or (c)⁹⁹ had the second-mentioned CFC been a resident.

The effect of paragraph 20(1)(h)(iii) is to increase the base cost of the right in a CFC by amounts already included in the income of a resident under section 9D(2). This treatment ensures that proceeds from the disposal of a right in a CFC are not subject to CGT to the extent of amounts already subjected to normal tax because of the application of section 9D(2). The increased base cost of the right in a CFC is reduced by any foreign dividends that were exempt under section 10B(2)(a) or (b).

See the *Comprehensive Guide to Capital Gains Tax* for commentary on paragraph 20(1)(h)(iii).

4.10 Anti-avoidance provisions

Although not discussed in this Note, regard must be had to the following sections and paragraphs aimed at combatting tax avoidance arising in relation to foreign dividends:¹⁰⁰

- Section 8E – Dividends on certain shares deemed to be income in relation to recipients thereof.
- Section 8EA – Dividends on third-party backed shares deemed to be income in relation to recipients thereof.
- Section 22B – Dividends treated as income on disposal of certain shares.
- Paragraph 19 – Losses on disposal of certain shares.
- Paragraph 43A – Dividends treated as proceeds on disposal of certain shares.

5. Conclusion

A foreign dividend received by or accrued to a person is included in that person's gross income under paragraph (k) of the definition of "gross income" in section 1(1).

Section 10B provides for exemptions of foreign dividends received by or accrued to a person. The exemptions under section 10B(2) are applied separately to each foreign dividend received or accrued while the partial exemption under section 10B(3) applies to the aggregate amount of foreign dividends not exempt under section 10B(2). The partial exemption is determined by applying the applicable ratio to a specific type of person. The exemptions will not apply to the extent that section 10B(4), (5) or (6) applies.

With effect from years of assessment commencing on or after 1 March 2017, the maximum effective rate of tax on taxable foreign dividends increased from 15% to 20%.

⁹⁹ The reference to section 10B(2)(c), which replaced an erroneous reference to section 10B(2)(b), was inserted by the Taxation Laws Amendment Act 25 of 2015 with effect from the date of promulgation of that Act, 8 January 2016.

¹⁰⁰ See the *Tax Guide for Share Owners* and the *Comprehensive Guide to Capital Gains Tax* for commentary on certain of these provisions.

Paragraph 20(1)(h)(iii)

20. Base cost of asset.—(1) Despite section 23(b) and (f), but subject to paragraphs 24, 25 and 32 and subparagraphs (2) and (3), the base cost of an asset acquired by a person is the sum of—

(h) in the case of—

(iii) (aa) a right in a controlled foreign company held directly by a resident, an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10) of that company and of any other controlled foreign company in which that controlled foreign company and that resident directly or indirectly have an interest, which was included in the income of that resident in terms of section 9D during any year of assessment, reduced by the amount of any foreign dividend distributed by that company to that resident during any year of assessment which was exempt from tax in terms of section 10B(2)(a) or (c); or

(bb) a right in a controlled foreign company held directly by another controlled foreign company, an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10) of that first-mentioned controlled foreign company and of any other controlled foreign company in which both the first- and second-mentioned controlled foreign companies directly or indirectly have an interest, which during any year of assessment would have been included in the income of that second-mentioned controlled foreign company in terms of section 9D had it been a resident, reduced by the amount of any foreign dividend distributed by that first-mentioned controlled foreign company to the second-mentioned controlled foreign company if that dividend would have been exempt from tax in terms of section 10B(2)(a) or (c) had that second-mentioned controlled foreign company been a resident;